IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2871 OF 2004.
IN
FIRST APPEAL NO. 478 OF 2004.

AND

CIVIL APPLICATION NO.3436 OF 2004.
IN
FIRST APPEAL NO. 453 OF 2004.

Sompalsingh J. Kataria ..Applicant.

VERSUS.

Shreekrishna V. Mone ..Oppenent.

...

Mr. Sandesh D. Patil for the appellant.

Mr. S.G.Deshmukh for the respondent - opponent.

CORAM: S. B. MHASE &
R. S. MOHITE, JJ.

DATE : OCTOBER 19, 2004.

P.C.:-

1. Heard Mr. Sandesh Patil for the applicant and Mr.S.G.Deshmukh for the respondent. These are applications for extension of time.

2. This court has passed an order on 20th April 2004 in Civil Application No.1164 of 2004 and Civil application No.1165 of 2004 in First Appeal No.478 of 2003 directing the applicant - appellant to deposit the principal amount within a period of eight weeks from the

date of order and granted interim relief in terms of prayer clause-(a) of civil applications. It was made clear that on failure to deposit, the stay shall stand vacated. On deposit of the amount, the respondent was allowed to withdraw the amount on furnishing a bank guarantee for the amount withdrawn and keeping the bank guarantee alive till the hearing and final disposal of the appeal. As per this order, the amount was not deposited.

2. The learned counsel for the applicant states that the amount was not deposited because the applicant has approached the Hon'ble the Supreme Court of India by filing a Special Leave Petition against the order dated 20th April 2004 passed by this court. However, the said SLP is now dismissed. The apex Court has passed the following order:

> *"The SLP being against interlocutory order, we are not inclined to interfere with the same. Learned senior counsel appearing for the petitioner, however, submits that the petitioner will comply with the order of the High court, hence seek extension of time. We see the impugned order of the High Court wherein time granted by the High Court is also expired. It is, therefore, appropriate for the petitioner to make an application for extension of time before the High Court."*

3. Learned counsel for the applicant, therefore, states that in view of these observations of the Apex Court, present applications have been filed in this court for extension of time. He further submits that he has brought two demand drafts drawn in favour of the trial court for an amount of Rs.5 lacs and Rs.2.5 lacs and thus he is ready to deposit by these demand drafts the amount as directed by this court vide its order dated 20th April 2004. He, therefore, submitted that the amount be accepted and stay to execution be continued.

4. Learned counsel Mr. S.G.Deshmukh appearing on behalf of the respondent states that since the amount is being realised he has no objection for getting the amount deposited and extending the time. However, he submitted that as the amount has not been deposited as directed by this court within time, which was allowed to be withdrawn by the respondent, in this process he has suffered a loss of Rs.50,000/-.

5. We have noticed that while passing the interim order we have directed the applicant - appellant to deposit the amount but have not directed to deposit the amount of interest, etc., as per the decree and the said issue has been kept open for final adjudication. The

present issue raised in respect of the interest of Rs.50,000/- as a result of the late deposit is equally an issue which can be considered at the time of the final hearing of the matter. However, for that matter we need not to reject the applications for extension of time. In the circumstances, we pass the following order:

O R D E R

. Both the applications are hereby allowed. Time to deposit the amount granted vide order dated 20.4.2004 is hereby extended till 26.10.2004. The trial court is hereby directed to accept the demand drafts from the applicant.

. Civil applications are accordingly disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar of this court.

(R.S.MOHITE,J.) **(S.B.MHASE,J.)**